

STIPULATIONS

The stipulations of the parties are listed in the Award of the Special Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Special Administrative Law Judge awarded claimant benefits based upon a sixteen percent (16%) functional impairment rating to the body as a whole. The respondent requests the Appeals Board review that finding. The issues now before the Appeals Board are:

- (1) The nature and extent of disability for the alleged accidental injury of October 11, 1990.
- (2) Whether claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent during the period September 1992 through February 10, 1993.
- (3) The nature and extent of disability for any accidental injury sustained between September 1992 and February 10, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

(1) On October 11, 1990, claimant injured her upper back while lifting a forty (40) pound box of rivets. Based upon the testimony of the treating physician, board certified orthopedic surgeon Duane Murphy, M.D., the Appeals Board finds claimant experienced a mild trapezius muscle strain which did not result in permanent impairment. Therefore, claimant is entitled to temporary total disability benefits and medical benefits only for this work-related accident, which is the subject matter of Docket No. 150,113.

(2) In Docket No. 178,311, claimant alleges she sustained accidental injury to her neck and upper back during the period of September 1992 through February 10, 1993. In October 1992, respondent transferred claimant to a job that required repetitive activity. During the Christmas plant shutdown in late December 1992, claimant awoke with severe pain in her neck, shoulders, and upper back. At that time, claimant had been off work for approximately four (4) days. On February 10, 1993, claimant experienced severe pain in her neck and shoulders when she bent over to pick up a tool she had dropped.

Claimant presented the deposition of Ernest R. Schlachter, M.D., who examined claimant and diagnosed disc disease in the cervical spine aggravated by her work activities, rotator cuff tendinitis of the left shoulder secondary to overuse syndrome, and thoracic outlet syndrome on the left. Dr. Schlachter believes claimant has a nineteen percent (19%) impairment of function to the body as a whole as a result of her work related injuries.

The record also contains a medical report of Lawrence Blaty, M.D., dated June 9, 1994, who examined claimant during a court-ordered independent medical examination. Dr. Blaty found claimant had a left trapezius strain with mild shoulder impingement and chronic cervical strain with degenerative disc disease. He believes claimant has a thirteen percent (13%) functional impairment to the body as a whole for these conditions.

Respondent presented the deposition of board certified orthopedic surgeon Duane Murphy, M.D. Dr. Murphy saw claimant on December 30, 1992, immediately after an incident at home when claimant awoke with severe pain in her neck and shoulders. At that time, the doctor diagnosed a narrowing of the C5-6 intervertebral space and C5-6 radiculopathy on the left. He does not believe claimant has thoracic outlet syndrome, nor does he have an opinion regarding rotator cuff tendinitis because he did not examine her for that condition. Because he did not know the type of work activities claimant did between September 1992 and February 1993, Dr. Murphy is unable to provide an opinion whether claimant's cervical condition was caused or aggravated by her work.

Respondent's principal contention is that claimant's functional impairment is the result of an accident claimant sustained at home in late December 1992 during the Christmas plant shutdown. The Appeals Board rejects that theory and finds claimant has sustained injury as a result of her work activities during the period of September 1992 through February 10, 1993. Claimant's testimony that she had ongoing symptoms in her neck and upper back leading up to the December 1992 incident is buttressed by Dr. Murphy's office notes dated December 30, 1992, that indicate claimant was having symptoms for approximately two (2) weeks prior to her visit to the doctor. When the Appeals Board considers the whole record, it finds claimant's theory of accidental injury over the period in question as a result of repetitive mini-trauma is the more persuasive.

The Appeals Board adopts the Special Administrative Law Judge's finding that claimant is entitled to permanent partial disability benefits based upon the functional impairment rating of sixteen percent (16%). That rating falls within a reasonable range as indicated by the expert opinions of Drs. Blaty and Schlachter.

Because claimant has returned to work for respondent at a comparable wage, claimant neither seeks, nor is entitled to, a finding of work disability. Therefore, claimant's permanent partial disability benefits are to be computed based upon functional impairment as provided by K.S.A. 1992 Supp. 44-510e.

Because the Workers Compensation Fund has so stipulated, it is responsible for fifty percent (50%) of the award entered in Docket No. 178,311.

For purposes of computation of the Award in Docket No. 178,311, February 10, 1993, is designated the date of accident because that is the last date of

accident alleged by claimant and the last date of significant flare-up of symptomatology before claimant underwent additional therapy and treatment.

AWARD

WHEREFORE, IN DOCKET NO. 150,113, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Pamela G. Blackwell, and against the respondent, Beech Aircraft Corporation, a self-insured, for an accidental injury on October 11, 1990, and based on an average weekly wage of \$562.65, for 13.86 weeks of temporary total disability compensation at the rate of \$278.00 per week in the sum of \$3,853.08. Claimant is also awarded medical benefits for treatment of the injury sustained on that date. Permanent partial general disability benefits are denied for that date of accident.

As of June 2, 1995, there is due and owing claimant 13.86 weeks of temporary total disability benefits at the rate of \$278.00 per week in the sum of \$3,853.08 which is ordered paid in one lump sum, less any amounts previously paid.

WHEREFORE, IN DOCKET NO. 178,311, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Pamela G. Blackwell, and against the respondent, Beech Aircraft Corporation, a self-insured, and the Workers Compensation Fund, for an accidental injury which culminated on February 10, 1993, and based on an average weekly wage of \$614.73, for 415 weeks of permanent partial disability benefits at the rate of \$65.58 per week in the sum of \$27,215.70 for a 16% permanent partial general body impairment of function.

As of June 2, 1995, there is due and owing claimant 415 weeks of permanent partial disability benefits at the rate of \$65.58 per week in the sum of \$27,215.70 which is ordered paid in one lump sum, less any amounts previously paid.

Future medical treatment may be awarded upon proper application to the Director. Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

All compensation, medical expense and costs are to be borne one-half by the respondent and one-half by the Kansas Workers Compensation Fund.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 1992 Supp. 44-536.

Fees necessary to defray the expenses of administration of the Kansas Workers Compensation Act are hereby assessed one-half to the respondent and one-half to the Kansas Workers Compensation Fund to be paid to the following:

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| William F. Morrissey Special Administrative Law Judge | \$150.00 |
| Barber & Associates Transcript of Regular Hearing | \$210.45 |
| Deposition of Duane Murphy, M.D. | \$158.00 |
| Kelley, York & Associates Deposition of Ernest R. Schlachter, M.D. | \$199.50 |

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Tom E. Hammond, Wichita, Kansas
Terry J. Torline, Wichita, Kansas
John C. Nodgaard, Wichita, Kansas
William F. Morrissey, Special Administrative Law Judge
George Gomez, Director

amount of \$19,314.95 shall be paid at the rate of \$65.57 per week for 294.57 weeks, or until further order of the Director.

The remaining orders of the Appeals Board are unmodified.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

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